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SUPPLEMENTAL TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 11

GALLAGHER, CHIEF OF POLICE OF THE CITY OF SPRINGFIELD, MASSACHUSETTS, ET AL., APPELLANTS,

vs.

CROWN KOSHER SUPER MARKET OF MASSACHUSETTS, INC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

FILED NOVEMBER 17, 1959
PROBABLE JURISDICTION NOTED APRIL 25, 1960

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[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

To the District Court of Springfield holden at Springfield for the transaction of criminal business, within the County of Hampden, EDWARD T. COLEMAN of Springfield, in said County, in behalf of The Commonwealth of Massachusetts, on oath complains that HAROLD CHERNOCK d.b.a. CROWN MARKET of said Springfield, in said County, on the Sixth day of June in the year of our Lord one thousand nine hundred and fifty four at said Springfield, in said County of Hampden and within the judicial district of said Court, said day being the Lord's Day did keep open his shop at 57 Sumner Avenue for the purpose of doing business therein, said business not being a work of necessity and charity, and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws, as amended—

EDWARD T. COLEMAN
Complainant

Hampden, ss.

Received and sworn to this Seventh day of June in the year of our Lord one thousand nine hundred and fifty-four.

Before Said Court,

HARRY O. EBERHARDT
Assistant Clerk of said District Court of Springfield

[Seal]

JAMES J. LOVETT
2nd *Assistant Clerk of said Court*

May 26, 1959

A copy—Attest:
REH

[fol. 192]

VIO. LORD'S DAY

No. 172261

District Court of Springfield

COMMONWEALTH

vs.

HAROLD CHERNOCK d.b.a. CROWN MARKET

Received June 7, 1954

COMPLAINT

Hampden, ss. June 15 1954

By virtue of the within complaint, the Defendant is this day brought before said Court, and pleads not guilty—

Counsel for Commonwealth

Counsel for Defendant

On said last-named day, upon examination, it is considered by said Court, (Noonan, J.) that said Defendant is guilty.

It is therefore ordered by said Court that said Defendant pay a fine of fifteen dollars, NRA
and stand committed to the House of Correction
situate in said Springfield
till this sentence be performed.

From which sentence the Defendant appeals and he is ordered to recognize, in the sum of 100 dollars, to appear at Superior Court, to be held at said Springfield, on Monday June 21, 1954 and stand committed to the Common Jail until this order be complied with.

(Noonan, J.)

[Seal] HARRY O. EBERHARDT
Assistant Clerk.

May 26, 1959

A true copy. Attest:

.....
2nd Ass't. Clerk

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss. A. D. 195

I have arrested the within-named Defendant and have brought him before said Court.

Police Officer

of Springfield

PENALTIES

[fol. 193]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

To the District Court of Springfield holden at Springfield for the transaction of criminal business, within the County of Hampden, GERALD A. DRISCOLL of Springfield, in said County, in behalf of The Commonwealth of Massachusetts, on oath complains that HAROLD CHERNOCK doing business as CROWN MARKET of said Springfield, in said County, on the Thirtieth day of May in the year of our Lord one thousand nine hundred and fifty four at said Springfield, in said County of Hampden and within the judicial district of said Court, said day being the Lord's Day did keep open his shop at 57 Sumner Avenue for the purpose of doing business therein, said business not being a work of necessity and charity, and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws, as amended—

GERALD A. DRISCOLL
Complainant

Hampden, ss.

Received and sworn to this First day of June in the year of our Lord one thousand nine hundred and fifty four.

Before Said Court,

EDWARD T. COLLINS
Clerk of said District Court of Springfield

[Seal] JAMES J. LOVETT
2nd *Assistant Clerk of said Court*

May 26, 1959

A copy—Attest:

REH

[fol. 194]

VIO. LORD'S DAY

No. 171834

District Court of Springfield

COMMONWEALTH

vs.

HAROLD CHERNOCK doing business as CROWN MARKET

Received June 1, 1954.

COMPLAINT

Hampden, ss. June 15, 1954

By virtue of the within complaint, the Defendant is this day brought before said Court, and pleads not guilty—

Counsel for Commonwealth

Counsel for Defendant

On said last-named day, upon examination, it is considered by said Court, (Noonan, J.) that said Defendant is guilty.

It is therefore ordered by said Court that said Defendant pay a fine of fifteen dollars, NRA
and stand committed to the House of Correction
situate in said Springfield
till this sentence be performed.

From which sentence the Defendant appeals and he is ordered to recognize, in the sum of 100 dollars, to appear at Superior Court, to be held at said Springfield, on Monday June 21, 1954 and stand committed to the Common Jail until this order be complied with.

(Noonan, J.)

[Seal] HARRY O. EBERHARDT
Assistant Clerk.

May 26, 1959

A true copy. Attest:

JAMES J. LOVETT
2nd Ass't. Clerk

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss. A. D. 195

I have arrested the within-named Defendant and have brought him before said Court.

Police Officer
of Springfield

PENALTIES

[fol. 195]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

57 Sumner Avenue

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

To the District Court of Springfield holden at Springfield for the transaction of criminal business, within the County of Hampden, THOMAS J. KANE of Springfield, in said County, in behalf of The Commonwealth of Massachusetts, on oath complains that HAROLD CHERNOCK doing business as CROWN MARKET of said Springfield, in said County, on the Second day of May in the year of our Lord one thousand nine hundred and fifty four at said Springfield, in said County of Hampden and within the judicial district of said Court, said day being the Lord's Day did keep open his shop at 57 Sumner Avenue for the purpose of doing business therein, said business not being a work of necessity and charity, and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws, as amended—

THOMAS J. KANE
Complainant

Hampden, ss.

Received and sworn to this Twelfth day of May in the year of our Lord one thousand nine hundred and fifty-four.

Before Said Court,

HARRY O. EBERHARDT
Assistant Clerk of said District Court of Springfield

[Seal]

JAMES J. LOVETT
2nd *Assistant Clerk of said Court*

May 26, 1959

A copy—Attest:

REH

[fol. 196]

Vio. Lord's Day

No. 170637

District Court of Springfield

Commonwealth

vs.

Harold Chernock doing business as Crown Market

Received May 12, 1954

Complaint

Hampden. ss. May 14, 1954

By virtue of the within complaint, the Defendant is this day brought before said Court, and pleads not guilty— (O'Malley, J.) and this case is continued to the 28 day of May current, at 9 o'clock a.m., and Defendant is ordered to recognize in 100 dollars, for his appearance then before said Court. c June 9, 1954 c June 15

Counsel for Commonwealth

Counsel for Defendant Sherman E. Fein

On said last-named day, upon examination, it is considered by said Court, (Noonan, J.) that said Defendant is guilty.

It is therefore ordered by said Court that said Defendant pay a fine of fifteen dollars, and stand committed to the House of Correction situate in said Springfield till this sentence be performed. NRA

From which sentence the Defendant appeals and he is ordered to recognize, in the sum of 100 dollars, to appear at Superior Court, to be held at said Springfield, on Monday

June 21, 1954 and stand committed to the Common Jail until this order be complied with.

(Noonan, J.)

[Seal] HARRY O. EBERHARDT
Assistant Clerk.

May 26, 1959

A true copy. Attest:

JAMES J. LOVETT
2nd Ass't. Clerk

THE COMMONWEALTH OF MASSACHUSETTS

Hampden, ss. A. D. 195

I have arrested the within-named Defendant and have brought him before said Court.

Police Officer

of *Springfield*

PENALTIES

[fol. 197]

THE COMMONWEALTH OF MASSACHUSETTS

Crown Kosher
Super Market
of Mass., Inc.

Be it Known That whereas

Harold Chernock, Samuel Sowalsky,
Sam Smith, Jack Sloat,
Sherman E. Fein and Frances J. Simeoli

have associated themselves with the intention of forming a corporation under the name of

Crown Kosher Super Market of Mass., Inc.,

for the purpose of the following: To engage in the business of buying, selling and dealing, at wholesale and/or retail, in

meats, meat products, poultry, poultry products, provisions, food supplies, fish, game, produce and groceries; to purchase, build, construct or cause to be constructed, lease, or otherwise in any manner acquire, and maintain cold storage plants, refrigerators and buildings necessary for the conduct of said business. To negotiate, make and obtain loans, unsecured or secured by real estate, improved and unimproved, or by personal property, or upon personal security, and to lend money and extend credit, with or without security, to customers and others. To enter into, make and perform and carry out contracts of every sort and kind with any person, firm, association or corporation, municipality, body politic, county, territory, state, government or colony or dependency thereof, and, without limit as to amount, to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments [fol. 198] and evidences of indebtedness, whether unsecured or secured by mortgage, pledge or otherwise, as well as to secure the same by mortgage, pledge and otherwise. To the same extent as natural persons might or could do, to purchase or otherwise acquire, and to hold, own, maintain, work, develop, sell, lease, exchange, hire, convey, mortgage, or otherwise dispose of and deal in lands and leaseholds, and any interest, estate, and rights in real property and any personal or leased property, and any franchises, rights, licenses, or privileges necessary, convenient or appropriate for any of the purposes herein expressed, incidental to the business;

with an authorized capital stock of one thousand two hundred shares, consisting of six hundred shares of class A common stock without par value and six hundred shares of class B common stock without par value. The amount of capital stock now to be issued is six hundred shares of class A common stock and six hundred shares of class B common stock, to be paid for as follows:—In Cash: in full, six hundred shares of class A common stock and six hundred shares of class B common stock;

and have complied with the provisions of the Statutes of this Commonwealth in such case made and provided, as appears

from the Articles of Organization of said corporation, duly approved by the Commissioner of Corporations and Taxation and recorded in this office:

Now, therefore, I, EDWARD J. CRONIN, Secretary of The Commonwealth of Massachusetts, DO HEREBY CERTIFY that said

Harold Chernock, Samuel Sowalsky,
Sam Smith, Jack Sloat,
Sherman E. Fein and Frances J. Simeoli,

their associates and successors, are legally organized and established, as, and are hereby made, an existing corporation as of July 29, 1953 under the name of

Crown Kosher Super Market of Mass., Inc.,

with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the Great Seal of The Commonwealth of Massachusetts hereunto affixed, this tenth day of September in the year of our Lord one thousand nine hundred and fifty-three.

Edward J. Cronin
(L. S.) Secretary of the Commonwealth

Leo M. Harlow
Deputy Secretary

[fol. 199]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

THE COMMONWEALTH OF MASSACHUSETTS

~~EDWARD~~ J. ~~CRONIN~~

SECRETARY OF THE COMMONWEALTH

Boston, May-6 1959

I HEREBY CERTIFY, that the foregoing is a true photostatic copy of the record of the Certificate of Incorporation of

Crown Kosher Super Market of Mass., Inc.

organized under the provisions of chapter one hundred and fifty-six of the General Laws.

WITNESS the Great Seal of the Commonwealth.

/s/ JOSEPH D. WARD

JOSEPH D. WARD

~~EDWARD~~ J. ~~CRONIN~~

Secretary of the Commonwealth.

[fol. 200]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

Hampden County

COMMONWEALTH,

v.

HAROLD CHERNOCK

SAME v. SAME

SAME v. SAME

Defendant's Bill of Exceptions

This bill of exceptions arises from a conviction of the defendant for the alleged violation of the provisions of Chapter 136 of the General Laws of Massachusetts, relative to observance of the Lord's Day.

The defendant waived trial by Jury and the case was submitted on the following Statement of Agreed Facts:

"The Defendant is a combination Kosher market and super market and as a result of his religious convictions, is closed to business on each and every Saturday and each and every Jewish Holiday of the year, but remains open for business on Sundays.

The Defendant was summoned to appear before the District Court of Springfield on three complaints against him, charging that on May 2, 1954, May 30, 1954, and June 6, 1954, all of which dates were on Sunday, he did: "Keep [fol. 201] open his shop at 57 Sumner Avenue, in Springfield, for the purpose of doing business therein, said business not being a work of necessity and charity and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws as amended."

The Defendant did sell at retail Kosher meats, bakery goods, vegetables and canned goods on May 2, 1954, May 30, 1954, and June 6, 1954, after the hours of ten o'clock in the forenoon; that the doors to the premises at said 57 Sumner Avenue were open after the hour of ten o'clock in the forenoon so as to admit the public for the purpose of doing business therein regarding all goods sold on the premises, and that on the said dates of May 2, 1954, May 30, 1954, and June 6, 1954, the defendant, after the opening hours of ten o'clock and continuing to closing time on the same dates, did sell to the public Kosher meats, as well as bakery goods, vegetables and canned goods of all types and descriptions.

On June 15, 1954, trial was had on the three above-mentioned complaints and the following motion was submitted by the defendant and disallowed:

"COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss. DISTRICT COURT OF SPRINGFIELD

COMMONWEALTH

vs.

HAROLD CHERNOCK D/B/A Crown Market

MOTION TO DISMISS

Now comes the defendant and moves that the three complaints against him for keeping his shop open on the Lord's Day be dismissed for the following reasons:

1. That the complaints do not set forth a crime fully, plainly, substantially and formally as required by Article 12 of the Constitution and by the standing laws.

[fol. 202]

2. That the complaints charge that the defendant did: "keep open your shop at 57 Sumner Avenue for the purpose of doing business therein," which does not constitute a crime since the defendant is authorized to keep open his shop under the provisions of the 1950 amendment to Section 6 of Chapter 136 of the General Laws.

/s/ Sherman E. Fein
/s/ Justin G. Cavanaugh
By His Attorneys

The defendant was found guilty and fined fifteen dollars ($15) upon each complaint. Appeal was taken to the Superior Court of Hampden County.

/s/ STEPHEN A. MOYNAHAN
Stephen A. Moynahan, District Attorney for the Commonwealth

/s/ JUSTIN G. CAVANAUGH
Justin G. Cavanaugh, Attorney for Defendant"

At the hearing before Hon. Eugene A. Hudson, the only evidence submitted was the above Statement of Agreed Facts. Also submitted, was the following Motion to Dismiss which was denied, and the defendant found guilty:

"COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss. SUPERIOR COURT

COMMONWEALTH

vs.

HAROLD CHERNOCK D/B/A Crown Market

MOTION TO DISMISS

Now comes the defendant and moves that the three complaints against him for keeping his shop open on the Lord's Day be dismissed for the following reasons:

[fol. 203] 1. That the complaints do not set forth a crime fully, plainly, substantially and formally as required by Article 12 of the Constitution and by the standing laws.

2. That the complaints charge that the defendant did: "keep open your shop at 57 Sumner Avenue for the purpose of doing business therein," which does not constitute a crime since the defendant is authorized to keep open his shop under the provisions of the 1950 amendment to Section 6 of Chapter 136 of the General Laws.

/s/ SHERMAN E FEIN
/s/ JUSTIN G CAVANAUGH
By His Attorneys"

The defendant, being aggrieved by the judge's denial of his Motion to Dismiss, has duly claimed his exception and has duly filed this bill of exceptions.

This bill of exceptions contains all the evidence material to the issue involved.

By his attorneys, Fein, Cavanaugh & Kimball, By Justin G. Cavanaugh, Sherman E. Fein.

Filed September 6, 1956.

Allowed:
Eugene A. Hudson, Justice Superior Court.

Sept. 21st 1956

Copy.

Attest,

Edward G. Shea, Clerk.

[fol. 204]

Nos. 926, 927, and 928

COMMONWEALTH

v.

HAROLD CHERNOCK

SAME v. SAME

SAME v. SAME

DEFENDANT'S BILL OF EXCEPTIONS

Hampden County

[fol. 205]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Hampden County September Sitting, 1957

Nos. 926, 927, 928

COMMONWEALTH

v.

HAROLD CHERNOCK

BRIEF FOR DEFENDANT

It is the contention of the defendant that the statement of agreed facts upon which this case is to be considered gives rise to the following issues:

1. Did the judge in the court below err in refusing to allow the defendant's motion to dismiss?

2. Does the original complaint offend article 2 of the Declaration of Rights of the Constitution of Massachusetts, and articles XI and XLVII of the amendments to the Constitution?

Issue No. 1

Chapter 136, section 5, of the General Laws of Massachusetts creates the offense under which the complaint of the Commonwealth originally issued. Specifically this section states: "Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and char-
[fol. 206] ity, shall be punished by a fine of not more than fifty dollars."

Proceeding under the above section, the complaint of the Commonwealth alleges that the defendant did "Keep

open his shop at 57 Sumner Avenue, in Springfield, for the purpose of doing business therein, said business not being a work of necessity and charity and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws as amended." (R. 2.)

This complaint alleges neither the type of business transacted nor the time of day when said business allegedly was open for business. How, then, can it be determined whether or not the business alluded to in the complaint comes within the exceptions set out in section 6 of chapter 136 of the General Laws as amended? Clearly the mere keeping open of a place of business is not a crime if the type of business done comes within one of the exceptions in section 6. Equally clearly the defendant has the right to keep his place of business open at certain times for certain purposes.

Paragraph 4 of section 6 of chapter 136 specifically authorizes the keeping open of a place of business for "the making or selling by bakers or their employees, before ten o'clock in the forenoon and between the hours of four o'clock and half past six o'clock in the afternoon, of bread or other food usually dealt in by them . . ."

Paragraph 4 of this section further authorizes the keeping open of a place of business by a kosher market such as the defendant's for "the selling or delivering of kosher meat by any person who, according to his religious belief, observes Saturday as the Lord's day by closing his place of business during the day until six o'clock in the afternoon, . . ."

Therefore it is obvious that the mere keeping open of a place of business on the Lord's Day is not an offense, but [fol. 207] rather the keeping open of said place of business for the sale of specific articles and at specific times which are not authorized by section 6 of chapter 136.

Since the complaint is not specific in these matters, the defendant contends that he was precluded from adequately preparing his defense.

In addition, paragraph 5 of section 6 of chapter 136, in referring to section 5, states: "Nor shall it prohibit the performing of secular business and labor on the Lord's day by any person who conscientiously believes that the seventh day of the week ought to be observed as the Sab-

bath and actually refrains from secular business and labor on that day, *if he disturbs no other person thereby;* . . . "

Accordingly, in the absence of an allegation on the part of the Commonwealth that someone was disturbed by the defendant's performing of secular business and labor on Sunday, there was nothing illegal about the defendant's actions.

For these reasons, then, the defendant contends that the judge in the court below erred in disallowing the defendant's motion to dismiss.

Issue No. 2.

The guaranties of freedom of religion to citizens of the Commonwealth stem from these sources in the Constitution of Massachusetts:

Article II of the Declaration of Rights states: " . . . And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; . . . "

Article of Amendment XI states: " . . . and all religious sects and denominations, demeaning themselves peaceably, [fol. 208] and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

Article of Amendment XVIII, section 1, states: "No law shall be passed prohibiting the free exercise of religion."

With such an impressive array of constitutional safeguards there surely can be no doubt concerning the desire of the Commonwealth to guard with jealous zeal the religious freedom of its citizens. How, then, can the conviction of the defendant be justified? It is clear that in the passage of section 6 of chapter 136 of the General Laws the Legislature intended that those individuals who observe Saturday as the Lord's Day and who refrain from work on that day shall be allowed to perform "secular business and labor" on Sunday. Certainly this legislative intent is contravened by a conviction which imposes a criminal penalty on a member of the Jewish faith who

conscientiously observes Saturday as the Sabbath but who works on Sunday. In effect such a conviction means that there is a penalty for being a member of the Jewish faith and that such a member is precluded from working six days a week if he wishes, while no such restriction exists upon his non-Jewish compatriots.

Rugg, C.J., in the case of *Glaser* v. *Congregation Kehillath Israel*, 263 Mass. 435, at 437, while commenting on the same constitutional provisions which are mentioned above, stated: "These great guaranties of religious liberty and equality before the law of all religions are not confined to adherents of the Christian religion or to societies and corporations organized for the promotion of Christianity. They extend likewise to the adherents of the ancient religion whose sacred scriptures form a part of the Bible. We are of opinion that Jews as well as Christians are protected by these explicit declarations of religious equality." [fol. 209] It is just this concept of the law that we respectfully urge upon this Court. If there are decisions in the law of our Commonwealth which tend to justify a conviction such as that represented here, then it is respectfully submitted that such decisions are antiquated and worthy of an enlightened and modern review.

In a Law Review article entitled "Sunday Statutes in a Modern Community" (Yale Law Journal, vol. 61, No. 3, March, 1952) which dealt with this entire topic the writer stated: "Clearly Sunday statutes are undesirable in a modern community." It is urged that this be the opinion of this worthy Court.

Respectfully submitted,

Fein, Cavanaugh & Kimball, Samuel L. Fein, Justin G. Cavanaugh, Sherman E. Fein, Attorneys for the Defendant.

[fol. 210]

Nos. 926, 927 and 928

COMMONWEALTH

v.

HAROLD CHERNOCK

BRIEF FOR DEFENDANT

Hampden County

[fol. 211]

[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Hampden County September Sitting, 1957

Nos. 926, 927, 928

COMMONWEALTH

v.

HAROLD CHERNOCK

BRIEF FOR THE COMMONWEALTH

The defendant was found guilty in Hampden County Superior Court of three complaints of violating the provisions of chapter 136, section 5, of the General Laws of Massachusetts, relative to the observance of the Lord's Day. The defendant waived trial by jury and the case was submitted on a statement of agreed facts, which is set out in detail in the defendant's bill of exceptions.

Argument

The pertinent section and chapter of the General Laws involved in this case (section 5 of chapter 136) is expressed in clear and simple language, namely: "Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and charity, shall be punished . . ."

In the following section (section 6), which has the marginal note, "Limit of operation of preceding section," there [fol. 212] follow several paragraphs of limitations, qualifications and exceptions to the prohibitory provisions of section 5. Seldom has the legislature been so circumspect, so cautious and so discreet in its efforts to protect so many groups and classes of persons as it has in this section. Year after year succeeding legislatures have amended and added new language to exempt persons who may come within the phrase of exception contained in section 5, that is, "works of necessity and charity."

It is argued by the defendant that paragraph 4 of section 6 authorizes the keeping open of a place of business for "the making or selling by bakers or their employees [between certain hours] of bread or other food usually dealt in by them" and that further in the same paragraph 4 persons are authorized to keep open a place of business by a Kosher market such as the defendant's for "the selling or delivering of kosher meat by any person who, according to his religious belief, observes Saturday as the Lord's day by closing his place of business during the day until six o'clock in the afternoon." However, in this case, as set out in the statement of agreed facts, the defendant sold not only Kosher meats, but also bakery goods, "vegetables and canned goods of all types and descriptions," and the store of the defendant was open on the three Lord's Days set out in the complaints "for the purpose of doing business therein regarding all goods sold on the premises."

The word "shop," contained in section 5, does not have a restrictive meaning. In *Commonwealth* v. *Moriarty*, 311 Mass. 116, on page 119, the Court said: " . . . 'Shop,' in its popular as well as legal meaning, is not confined to a workshop. It is a word of various significance, and 'store'

and 'workshop' are both included in it, and do not exhaust its meaning."

It would not appear logical that the legislature intended the sale of goods such as those found in a so-called combi-[fol. 213] nation super-market and Kosher market, on the Lord's Day, to be work of necessity and charity. If such was the legislative intent, the statute specifically would be worded to include the exception.

In *Flagg* v. *Millbury*, 4 Cush. 243, at page 244, the Court held (as stated in the headnote) that "By a work of 'necessity,' . . . is not meant a physical and absolute necessity; but any labor, business or work, which is morally fit and proper to be done on that day, under the circumstances of the particular case, is a work of necessity within the statute."

In referring to a baker whose occupation is to bake bread and other articles of food on the Lord's Day the Court said in *Commonwealth* v. *Crowley*, 145 Mass. 430, on page 432: "That the interval may be short between the preparation of the food and the appearance of it on the table of the consumer, the baker is permitted to do his work, and deliver his viands, on the Lord's day. But this reason does not apply to sales of provisions which do not require preparation by the dealer for the immediate use of the purchaser. We cannot believe that the Legislature intended to include in the exception of the amendment all persons who deal in the products of bakeries. Such a construction of the statute would allow a large proportion of the grocers and provision dealers of the Commonwealth to open their shops every Lord's day."

In referring to an individual who observes Saturday as the Sabbath, our Supreme Judicial Court has rendered different opinions, but of the same general nature.

In *Commonwealth* v. *Has*, 122 Mass. 40, on page 41, the Court said: "Keeping open a shop is in itself a solicitation to do business, and thus an invitation to commit acts which the Legislature has treated as violations of the day. While those, who, for conscientious reasons, observe the seventh day of the week as the Sabbath, may do business or per-[fol. 214] form labor which does not interfere with others, they are entitled by keeping open their shops to invite the

violation of the provisions of the act, even if their ordinary business is shopkeeping."

In *Commonwealth* v. *Dextra,* 143 Mass. 28, on page 32, the Court said: " . . . that the law prohibits the keeping open a shop, warehouse, or workhouse for the purpose of doing business therein on the Lord's day; and that it is immaterial what that business may be."

In *Commonwealth* v. *Starr,* 144 Mass. 359, on page 361, the Court said: " . . . the facts that he was a Hebrew, who conscientiously believed that the seventh day of the week ought to be observed as the Sabbath, and that he actually refrained from secular business on that day, were immaterial."

The limitations as to the performance of labor, business or work, except works of necessity and charity, on Sunday should not be indicative as any restriction on the guaranties of freedom of religion to citizens of this great Commonwealth. Whether an individual desires to worship on the Lord's Day or whether he does not is a matter of individual choice, and General Laws, chapter 136, does not in any way bar such freedom of worship. And as was more amply set forth in *Commonwealth* v. *McCarthy,* 244 Mass. 484, on page 486, the Court said: "The statute prohibiting the performance of labor, business or work, except works of necessity and charity, on Sunday, was enacted to secure respect and reverence for the Lord's day. 'That the day should be not merely a day of rest from labor, but also a day devoted to public and private worship and to religious meditation and repose, undisturbed by secular cares or amusements. . . . Whatever inconvenience might result at the present day from the literal and general enforcement of the Lord's day act, and whatever hard cases may have arisen under it, it is still the law of the land, to be [fol. 215] judicially interpreted and administered according to its true intent and meaning, and upon the same rules as would govern us in the interpretation of any other statute.'"

In the case of *Commonwealth* v. *Has,* 122 Mass. 40, the defendant contended that General Statutes, chapter 84, section 1 (which is now our General Laws, chapter 136, section 5), forbids to one who conscientiously observes the

seventh day of the week as the Sabbath the privilege of keeping open his shop on the first day of the week, that it is unconstitutional and in derogation of the Eleventh Amendment to the Constitution of the Commonwealth. However, the Court, on pages 41 and 42, said: "This act [General Statutes, Chapter 84, Section 1] has been so frequently recognized in both civil and criminal cases, and its various provisions have been so often the subject of judicial decision, that its constitutionality can hardly be considered an open question. It is essentially a civil regulation, providing for a fixed period of rest in the business, the ordinary avocations and the amusements of the community. If there is to be such a cessation from labor and amusement, some one day must be selected for the purpose: and even if the day thus selected is chosen because a great majority of the people celebrate it as a day of peculiar sanctity, the legislative authority to provide for its observance is derived from its general authority to regulate the business of the community and to provide for its moral and physical welfare. The act imposes upon no one any religious ceremony or attendance upon any form of worship, and anyone, who deems another day more suitable for rest or worship, may devote that day to the religious observance which he deems appropriate. That one who conscientiously observes the seventh day of the week may also be compelled to abstain from business of the kind expressly forbidden on the first day, is not occasioned by any [fol. 216] subordination of his religion, but because as a member of the community, he must submit to the rules which are made by lawful authority to regulate and govern the business of that community."

Conclusion

The defendant has argued that, despite the fact that there are many decisions in our Commonwealth which would seem to uphold the convictions in these cases, both the law and the decisions are antiquated and need to be modernized and streamlined. If this were true (and the Commonwealth does not agree with any such school of thought), then a remedy should be sought from the legislature and not from the courts of the Commonwealth.

For the foregoing reasons, it is respectfully submitted that the defendant's exceptions in these cases should be overruled.

Respectfully submitted,

Stephen A. Moynahan, District Attorney, Edward J. Dobiecki, Assistant District Attorney, Western District of Massachusetts.

[fol. 217]

Nos. 926, 927, and 928

COMMONWEALTH

v.

HAROLD CHERNOCK

BRIEF FOR THE COMMONWEALTH

Hampden County

[fol. 218]
[Stamp—Filed in Clerk's Office, June 4, 1959, United States District Court, District of Massachusetts]

COMMONWEALTH OF MASSACHUSETTS

Hampden ss

SUPERIOR COURT
IN EQUITY

CROWN KOSHER SUPER MARKET OF MASS., INC., alias HAROLD CHERNOCK d/b/a CROWN MARKET, Petitioner,

vs.

RAYMOND P. GALLAGHER, in his position as Chief of Police of the City of Springfield, Massachusetts, Respondent.

BILL OF COMPLAINT

1. The petitioner is Crown Kosher Super Market of Mass. Inc., a corporation duly established by law and having a usual place of business at 57 Sumner Avenue, Springfield, in said County of Hampden, also known as Harold Chernock d/b/a Crown Market.

2. The respondent is Raymond P. Gallagher in his position as Chief of Police of the City of Springfield, Massachusetts.

3. The petitioner is engaged in the business of selling kosher food products, including kosher meat, and because of its status as a kosher market, the petitioner is closed to business on each and every Saturday and each and every Jewish holiday but remains open for business on Sundays.

4. On May 2, 1954, May 30, 1954, and June 6, 1954, all of which dates were on Sundays, members of the Springfield Police Department went to the Crown Market and made certain purchases.

5. As a result of these purchases, criminal complaints were issued by the District Court of Springfield, which

complaints alleged that the defendant did:— "keep open your shop at 57 Sumner Avenue for the purpose of doing business therein, said business not being a work of necessity and charity, and said business not coming within the exceptions set out in Section 6 of Chapter 136 of the General Laws as amended."

6. On June 15, 1954, trial was had on the three above-mentioned complaints and the petitioner found guilty and fined fifteen dollars ($15.00) upon each complaint. Appeal was taken to the Superior Court of Hampden County.

7. The respondent has threatened that he will continue to make criminal complaints against your petitioner if it keeps its place of business open on Sundays for the purpose of doing business therein, and if the respondent continues to serve complaints upon the petitioner during the pendancy [sic] of the present appeal, irreparable harm will be caused to the petitioner in the conduct of its business.

Wherefore, Your Petitioner Prays:

1. That this Honorable Court issue a temporary restraining order restraining the Chief of Police of the City of Springfield from serving or causing to be served on Sunday, June 20, 1954, a complaint under Section 6 of Chapter 136, of the General Laws, as amended.

2. That this Honorable Court issue a preliminary injunction enjoining the Chief of Police of the City of Springfield from serving or causing to be served fur- [fol. 219] ther complaints upon the petitioner until such time as the question of so-called "Sunday Law" violations on the part of the petitioner's market shall have been decided on appeal.

3. That this Honorable Court grant such other and further relief as may be meet and just.

Crown Kosher Super Market of Mass., Inc., alias Harold Chernock d/b/a Crown Market, By Samuel L. Fein, Sherman E. Fein, Its Attorneys.

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss: June 18, 1954

Personally appeared before me Samuel L. Fein, and made oath that he has read the foregoing Bill of Complaint, and knows the contents thereof; and that the facts stated therein are true of his own knowledge, except such as are stated to be alleged on information and belief, and as to those that he believes them to be true.

Edward J. Farrell, Notary Public.

Filed June 18, 1954

Endorsed on back as follows:

Hampden, ss: Springfield June 18, 1954
Ordered, that notice issue, returnable into this Court on Friday, the 25th day of June 1954, at 10 o'clock A. M. at said Springfield to show cause why an application for a preliminary injunction should not be granted as prayed for in the bill; with a temporary restraining order under the first prayer.

By the Court (Warner, J.)
Helen Z. Greeley, Ass't. Clerk.

A true copy,

Attest:

Helen Z. Greeley, Assistant Clerk.

[fol. 220]

81716

CROWN KOSHER SUPER MARKET OF MASS. INC. alias HAROLD CHERNOCK d/b/a CROWN MARKET, Petitioner,

vs.

RAYMOND P. GALLAGHER, in his position as Chief of Police of the City of Springfield, Massachusetts, Respondent.

BILL OF COMPLAINT

[fol. 221]

COMMONWEALTH OF MASSACHUSETTS

(LS)

HAMPDEN, ss.

To Raymond P. Gallagher, in his position as Chief of Police of the City of Springfield, Massachusetts

GREETING:

Whereas a suit in equity has been begun against you in our Superior Court, within and for the county of Hampden, by Crown Kosher Super Market of Mass., Inc., a corporation duly established by law and having a usual place of business at 57 Sumner Avenue, Springfield, in the County of Hampden, also known as Harold Chernock d/b/a Crown Market

WE COMMAND YOU, if you intend to make any defense, that on the *first Monday of* July *next, which Monday is* the return day of this subpoena, or within *such further time as the law allows,*

you do cause your written appearance to be entered and your written answer or other lawful pleading to be filed in the office of the clerk of said court at Springfield in said county first above named, and further that you defend against said suit according to law, if you intend to make any defense, and that you do and receive what the court shall order, adjudge and decree therein.

Hereof fail not, at your peril, as otherwise said suit may be adjudged, and orders and decrees entered therein, in your absence.

WE ALSO NOTIFY YOU that application has been made in said suit, as appears in *the bill of complaint* filed therein, for a preliminary injunction

and that a hearing upon such application will be held at the court house at *said Springfield*

on Friday the twenty-fifth day of June A. D. 1954, at ten o'clock A. M., at which you may appear and show cause why such application should not be granted.

In the meantime, until such hearing, WE COMMAND YOU, Raymond P. Gallagher, Chief of Police of the City of Springfield and your agents, attorneys and counsellors, and each and every one of them, to desist and refrain from serving or causing to be served on Sunday, June 20, 1954, a complaint under Section 6 of Chapter 136, of the General Laws, as amended:

WITNESS, JOHN P. HIGGINS, CHIEF JUSTICE of our Superior Court, the eighteenth day of June in the year of our Lord one thousand nine hundred and fifty-four.

[Seal] EDWARD G. SHEA Clerk.
/s/ HELEN Z. GREELEY Ass't. Clerk

A true copy,

Attest:

[fol. 222]

No. 31716 Eq.

CROWN KOSHER SUPER MARKET OF MASS. INC., alias

vs.

RAYMOND P. GALLAGHER, Chief of Police of the City of Springfield

SUBPOENA

NOTICE UPON APPLICATION FOR PRELIMINARY INJUNCTION,

and

TEMPORARY RESTRAINING ORDER

Returned June 22, 1954

A true copy,

Attest:

/s/ HELEN Z. GREELEY
Ass't. Clerk

[Seal]

Officer's Return
Hampden, ss: June 18, A. D. 1954

City of Springfield

By virtue of this Subpoena Notice Upon Application for Preliminary Injunction and Temporary Restraining Order, I this day at 15 minutes past 4 o'clock in the afternoon, served on the within named Raymond P. Gallagher, Chief of Police of the City of Springfield, by giving in hand to him, a true and attested copy of the above described Subpoena and Order, for his appearance at Court as within directed. Said service was made at No. 80 Court Street, in Springfield, in the said County of Hampden.

JOSEPH ASCHER
Deputy Sheriff

FEES:

Service	2.00
Copy	1.00
Travel	.10
	$3.10

[Seal]

A true copy,

Attest:

/s/ HELEN Z. GREELEY
Assistant Clerk

[fol. 223]

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss. SUPERIOR COURT IN EQUITY

#81716

CROWN KOSHER SUPER MARKET OF MASS., INC., otherwise HAROLD CHERNOCK doing business as CROWN MARKET, Petitioner,

vs.

RAYMOND P. GALLAGHER, as he is Chief of Police of the City of Springfield, Respondent.

APPEARANCE

In the above entitled matter we hereby appear as attorneys for the respondent.

Charles D. Sloan, Donald A. Clancy

Filed: June 25, 1954.

A true copy.

Attest:

Helen Z. Greeley, Assistant Clerk.

[fol. 224]

No. 81716

CROWN KOSHER SUPER MARKET OF MASS., INC. (alias), (in eq.),

vs.

RAYMOND P. GALLAGHER, as he is Chief of Police of the City of Springfield.

Copy of

APPEARANCE

[fol. 225]

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

SUPERIOR COURT
No. 81716

CROWN KOSHER SUPER MARKET OF MASS. INC. alias HAROLD CHERNOCK d/b/a CROWN MARKET, Petitioner,

vs.

RAYMOND P. GALLAGHER, in his position as Chief of Police of the City of Springfield, Massachusetts, Defendant.

INTERLOCUTORY DECREE CONTINUING RESTRAINING ORDER IN FORCE

This cause came on to be heard upon the return of a notice to show cause with a temporary restraining order and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that said restraining order be and hereby is continued in force pending the final determination of this suit.

[Seal] By the Court (Warner J.)

Edward J. McKay, Assistant Clerk.

Entered June 25, 1954

A true copy,

Attest:

Helen Z. Greeley, Assistant Clerk.

[fol. 226]

No. 81716

CROWN KOSHER SUPER MARKET OF MASS., INC. alias

vs.

RAYMOND P. GALLAGHER

Copy of

INTERLOCUTORY DECREE CONTINUING RESTRAINING ORDER IN FORCE

[fol. 227]

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss. SUPERIOR COURT IN EQUITY

No. 81716

CROWN KOSHER SUPER MARKET OF MASS., INC. alias HAROLD CHERNOCK d/b/a CROWN MARKET, Petitioner,

vs.

RAYMOND P. GALLAGHER, in his position as Chief of Police of the City of Springfield, Massachusetts, Respondent.

FINAL DECREE DISMISSING BILL

and thereupon, upon consideration thereof, the plaintiff, consenting hereto, in writing

it is ordered, adjudged and decreed that the bill be and hereby is—DISMISSED.

By the Court (O'Brien J.)

Helen Z. Greeley, Assistant Clerk.

[Seal]

Entered October 6, 1958

Assented to:—

Samuel L. Fein

Samuel L. Fein, atty. for Crown Kosher Super Market of Mass., Inc. alias

A true copy,

Attest:

Helen Z. Greeley, Ass't. Clerk

[fol. 228]

No. 81716

CROWN KOSHER SUPER MARKET OF MASS., INC. alias

vs.

RAYMOND P. GALLAGHER

Copy of

FINAL DECREE DISMISSING BILL

[fol. 229]

SUPERIOR COURT, COMMON LAW

No. 81716

CROWN KOSHER SUPER MARKET OF MASS., INC. (alias) (in eq.)

vs.

RAYMOND P. GALLAGHER, Chief of Police of the City of Springfield, Massachusetts

COUNSEL FOR PLAINTIFF

Fein, Cavanaugh, Mitchell & Kimball (1421 Main)

COUNSEL FOR DEFENDANT

Charles D. Sloan) (Law Department, City Hall)
Donald A. Clancy)

DATE	NO.	DOCKET ENTRIES
1954		
June 18		Entered.
		Order of notice to show cause to issue returnable Friday the 25th. day of June current at 10 o'clock A.M.
		Restraining order to issue under first prayer (Warner, Justice).
	1	Subpoena issued returnable 1st. Monday July; notice to show cause and restraining order issued.
22	√	Subpoena returned.
25	2	Appearance—Charles D. Sloan, Donald A. Clancy for respondent.
	3	Interlocutory decree continuing restraining order in force (Warner, Justice).
1958		
June 3	√	Inactive.
Oct. 6	4	Final Decree Dismissing Bill. (O'Brien, Justice).

1958 November 3

A true copy of the Docket Minutes.

[Seal]

In Witness Whereof, I hereunto set my hand and have caused the seal of said court to be affixed on this twenty-ninth day of May, in the year of our Lord one thousand nine hundred and fifty-nine.

Helen Z. Greeley, Assistant Clerk.